IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 773 OF 2006

Ratanlal Manikrao Korade ...Appellant
V/s.
Shalimar Investment Corporation & Ors. ...Respondents

Mr.A.A. Kumbhakoni i/b. Mr.T.D. Deshmukh for the Appellant.
Mr.Utangale i/b. M/s.Utangale & Co. for Respondent Nos.1 and 3.

CORAM : V.M. KANADE, J.

DATED : JULY 26, 2007

P.C. :-

1. Heard the learned Counsel for the appellant and the learned Counsel for the respondents.

2. The appellant takes exception to the order passed by the trial Court whereby the suit for specific performance was partly decreed and he was awarded an amount of Rs.5500/- with interest at the rate of 12% p.a. and his alternative claim for damages was dismissed. The lower Appellate Court also confirmed the order passed by the trial Court.

3. The learned Counsel for the appellant submitted that he is restricting his claim only to the extent of

damages. He submitted that though alternative prayer was raised in both the courts below, they have not taken into consideration this aspect and have awarded damages to the extent of Rs.5500/- with interest, they only directed that the earnest money should be refunded with interest at the rate of 12% p.a. It is submitted that both the Courts below have erred in holding that the appellant had failed to deposit the amount of consideration particularly when it was an admitted position that the payment of instalment was to be made in accordance with the stages of construction. He further submitted that both the Courts below had erred in holding that the respondents had not committed breach of contract. He further submitted that both the Courts were not justified in rejecting the claim of the appellant for damages. He submitted that since the respondents had committed the breach of the contract, the appellant had to purchase another bungalow at a higher purchase price and therefore, he was entitled to get damages.

4. The submission made by the learned Counsel for

the appellant cannot be accepted. It is an admitted position that the layout plan has been changed on account of change in the zone made by the Municipal Corporation. Further the plaintiff has already recovered the amount of earnest money with interest at the rate of 12% p.a. during the pendency of the appeal in the lower Appellate Court and therefore, the learned Counsel appearing for the respondent is justified in saying that the decree is satisfied on account of payment of the said amount. In any event, no substantial question of law is raised in the Second Appeal.

. Second Appeal, accordingly, is dismissed.

(V.M. KANADE, J.)